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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/769,378	01/30/2004	Jeanet Harvej	891.0002.U1(US)	7896
29683 7590 08/27/2007 HARRINGTON & SMITH, PC 4 RESEARCH DRIVE SHELTON, CT 06484-6212			EXAMINER HOLLIDAY, JAIME MICHELE	
			ART UNIT	PAPER NUMBER
			2617	
			MAIL DATE	DELIVERY MODE
			08/27/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/769,378	Applicant(s) HARVEJ ET AL.	
	Examiner Jaime M. Holliday	Art Unit 2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 May 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Response to Arguments***

1. Applicant's arguments filed May 4, 2007, with regards to claims 5-9, have been fully considered but they are not persuasive.

Applicants basically argue that Shanahan and Morishima do not describe or suggest that a part of a melody or ring tone is to be selected with a cursor, or using a cursor to select part of audio information available for use. In particular, Morishima uses a cursor to select alternate options, while Shanahan teaches that parts of audio selections can be edited.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Shanahan discloses editing or sampling a portion of a desired, reading on "allowing the user to select part of the audio information." Morishima was used to overcome the limitation of "a cursor" used for selecting, as cited in the previous Office Action. Both references discuss selection, and Morishima is used to modify Shanahan, in order to teach a particular method of selection of audio information.

Therefore, in view of the preceding arguments, Examiner maintains previous rejection.

2. Applicant's arguments with respect to claim 15 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. **Claims 1, 3, 4 and 14** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Shanahan (U.S. Patent # 6,496,692 B1)** in view of **Skorko (U.S. Patent # 6,560,466 B1)**.

Consider **claim 1**, Shanahan clearly shows and discloses an apparatus that allows user to program user-defined audio information into a programmable electronic device. A user may choose certain information, such as an audio sample of a popular song that is available from source **50** and transferred to programmer **30**. The programmer may be embedded within programmable device **20**, reading on the claimed "method of attracting the attention of a user of a mobile terminal, the method comprising the mobile terminal receiving audio

information," (col. 1 lines 55-57, col. 3 lines 19-40, col. 8 lines 60-67). A user may customize user-defined information (audio track) by performing various editing procedures, and he or she may be given the option to review the piece to ensure it is acceptable, reading on the claimed "providing the audio information to the user," (col. 9 lines 25-40). In addition to selecting user-defined information with the programmer, a user may customize user-defined information, such as finding an audio track and editing or sampling a portion of the desired segment, reading on the claimed "while providing the audio information to the user, receiving selections from selecting means of the mobile terminal, the selections identifying a selected part of the audio information," (fig. 8, fig. 9, col. 9 lines 5-42). A user may wish to sample a few bars of a popular song and send it along as signature information. A user may program the device so that certain signature files are played in response to receiving a characteristic indicative of a caller, reading on the claimed "mobile terminal subsequently attracting the attention of the user by playing the selected part of the audio information," (col. 7 lines 60-65, col. 9 lines 30-32).

However, Shanahan fails to specifically disclose that the volume at which the signature file is played is dependent on the proximity of the user to the device.

In the same field of endeavor, Skorko clearly shows and discloses a wireless communication handset with a sensor and detection circuitry to detect user proximity to the handset. The detection circuitry is connected to the control

unit of the handset to implement ring volume control. When a user comes into close proximity of the sensor, the detection circuitry signals the control unit to lower the ring volume, reading on the claimed "volume of the playback depending on the proximity of the user to the mobile terminal," (abstract, col. 1 lines 55-1).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use the proximity of a user to a handset to lower the ring volume as taught by Skorko in the apparatus of Shanahan, in order to customize the device to suit the user (Shanahan; abstract).

Consider **claim 3**, Shanahan, as modified by Skorko, clearly shows and discloses the claimed invention **as applied to claim 1 above**, and in addition, Shanahan further discloses that user-defined information may be provided to the device from the source via link **32** and computer **30**, reading on the claimed "providing step is performed by a signal source transmitting the audio information to the mobile terminal," (col. 3 lines 19-40, col. 8 lines 60-67, col. 9 lines 15-27).

Consider **claim 4**, Shanahan, as modified by Skorko, clearly shows and discloses the claimed invention **as applied to claim 1 above**, and in addition, Shanahan further discloses that a user may program the device so that certain signature files are played in response to receiving a characteristic indicative of a caller, reading on the claimed "mobile terminal is a mobile telephone, and wherein the attracting step comprises the mobile telephone receiving an incoming telephone call," (col. 7 lines 60-65, col. 9 lines 30-32).

Consider **claim 14**, Shanahan clearly shows and discloses an apparatus that allows user to program user-defined audio information into a programmable electronic device. A user may choose certain information, such as an audio sample of a popular song that is available from source **50** and transferred to programmer **30**. The programmer may be embedded within programmable device **20**, (col. 1 lines 55-57, col. 3 lines 19-40, col. 8 lines 60-67). A user may customize user-defined information (audio track) by performing various editing procedures, and he or she may be given the option to review the piece to ensure it is acceptable. This editing may be accomplished by using an application program with the programmer or by using known software with computer **60**, (col. 9 lines 25-40). In addition to selecting user-defined information with the programmer, a user may customize user-defined information, such as finding an audio track and editing or sampling a portion of the desired segment, (fig. 8, fig. 9, col. 9 lines 5-42). A user may wish to sample a few bars of a popular song and send it along as signature information. A user may program the device so that certain signature files are played in response to receiving a characteristic indicative of a caller, reading on the claimed "software system for performing the steps of claim 1 in a mobile terminal," (col. 7 lines 60-65, col. 9 lines 30-32).

However, Shanahan fails to specifically disclose that the volume at which the signature file is played is dependent on the proximity of the user to the device.

In the same field of endeavor, Skorko clearly shows and discloses a wireless communication handset with a sensor and detection circuitry to detect user proximity to the handset. The detection circuitry is connected to the control unit of the handset to implement ring volume control. When a user comes into close proximity of the sensor, the detection circuitry signals the control unit to lower the ring volume, reading on the claimed "volume of the playback depending on the proximity of the user to the mobile terminal," (abstract, col. 1 lines 55-1).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use the proximity of a user to a handset to lower the ring volume as taught by Skorko in the apparatus of Shanahan, in order to customize the device to suit the user (Shanahan; abstract).

6. **Claim 2** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Shanahan (U.S. Patent # 6,496,692 B1)** in view of **Skorko (U.S. Patent # 6,560,466 B1)**, and in further view of **Osman (U.S. Patent # 6,889,039 B2)**.

Consider **claim 2**, and **as applied to claim 1 above**, Shanahan, as modified by Skorko, clearly shows and discloses the claimed invention except that the audio tracks are edited using voice commands.

In the same field of endeavor, Osman clearly shows and discloses a method where a user can with use of a memory management terminal record an acoustic sample. The user can assign each acoustic sample with a label or category-label, a priority, a sorting criteria and a name. The method includes



those acoustic samples with the same label or category-label can be represented on the display of a memory management terminal and can be re-sorted, played back or deleted. The handling of the recorded acoustic samples can be done by using a keyboard of the memory management terminal, but also can be done by using the voice commands, reading on the claimed "receiving selections from selecting means of the mobile terminal further comprises receiving voice commands identifying the selected part of the audio information," (col. 1 lines 32-43).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to allow a user to use voice commands to handle acoustic samples as taught by Osman in the apparatus of Shanahan, as modified by Skorko, in order to customize the device to suit the user (Shanahan; abstract).

7. **Claims 5, 6 and 9** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Shanahan (U.S. Patent # 6,496,692 B1)** in view of **Morishima (Pub # U.S. 2003/0083107 A1)**.

Consider **claim 5**, Shanahan clearly shows and discloses an apparatus that allows user to program user-defined audio information into a programmable electronic device. A user may choose certain information, such as an audio sample of a popular song that is available from source **50** and transferred to programmer **30**. The programmer may be embedded within programmable

device 20, reading on the claimed "mobile terminal comprising: means for receiving audio information," (col. 1 lines 55-57, col. 3 lines 19-40, col. 8 lines 60-67). In addition to selecting user-defined information with the programmer, a user may customize user-defined information, such as finding an audio track and editing or sampling a portion of the desired segment, reading on the claimed "means for allowing the user to select part of the audio information," (fig. 8, fig. 9, col. 9 lines 5-42). A user may wish to sample a few bars of a popular song and send it along as signature information. A user may program the device so that certain signature files are played in response to receiving a characteristic indicative of a caller, reading on the claimed "means for attracting the attention of the user by playing the selected part of the audio information, and means for determining that the attention of the user is desired/required, the determining means being adapted to operate the attracting means," (col. 7 lines 60-65, col. 9 lines 30-32).

However, Shanahan fails to specifically disclose that the sample is selected using a display and a cursor.

In the same field of endeavor, Morishima clearly shows and discloses a mobile phone of a folding type which includes a sub-operation unit which can be operated in the state where the mobile phone is folded, and a control unit for setting a useful function for a case in which a change is made in accordance with an operation by use of the sub-operation unit in a state where the first case and the second case are folded. The sub-operation unit may include a select key for

selecting a ring tone, which is previously registered and a scroll key for changing a type of the ring tone, and the sub-display unit may display the type of the ring tone in accordance with an operation of the scroll key. If the user pushes the first operation key **11** in a state where a cursor (square portion on the display screens **30 to 50 in FIG. 7**) is positioned to a desired sound or melody, the control unit **14** determines a setting of the ring tone, which is designated by the cursor, reading on the claimed "means comprising a display for showing audio information available for selection and a cursor, the cursor for selecting a part of the displayed audio information," (paragraphs 19, 23, 56).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to allow a user select ring tones that are on a display using a cursor as taught by Morishima in the apparatus of Shanahan, in order to customize the device to suit the user (Shanahan; abstract).

Consider **claim 6**, Shanahan, as modified by Morishima, clearly shows and discloses the claimed invention **as applied to claim 5 above**, and in addition, Shanahan further discloses that a user may customize user-defined information (audio track) by performing various editing procedures, and he or she may be given the option to review the piece to ensure it is acceptable, reading on the claimed "means for providing the information to the user while receiving the information," (col. 9 lines 25-40).

Consider **claim 9**, Shanahan, as modified by Morishima, clearly shows and discloses the claimed invention **as applied to claim 5 above**, and in

addition, Shanahan further discloses that a user may program the device so that certain signature files are played in response to receiving a characteristic indicative of a caller, reading on the claimed "mobile terminal is a mobile telephone, and wherein the attracting step comprises the mobile telephone receiving an incoming telephone call," (col. 7 lines 60-65, col. 9 lines 30-32).

8. **Claims 7 and 8** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Shanahan (U.S. Patent # 6,496,692 B1)** in view of **Morishima (Pub # U.S. 2003/0083107 A1)**, and in further view of **Osman (U.S. Patent # 6,889,039 B2)**.

Consider **claim 7**, and **as applied to claim 5 above**, Shanahan, as modified by Morishima, clearly shows and discloses the claimed invention except that depressing a button starts selecting a part of the audio track.

In the same field of endeavor, Osman clearly shows and discloses a method where a user can with use of a memory management terminal record an acoustic sample. The user can assign each acoustic sample with a label or category-label, a priority, a sorting criteria and a name. The method includes those acoustic samples with the same label or category-label can be represented on the display of a memory management terminal and can be re-sorted, played back or deleted, (col. 1 lines 32-43). When the user selects the "Select" operation from the "Record" display by pressing the left soft key **8**, "Recording" display **50** will appear. Thereafter the phone starts the recording of a voice memo, and simultaneously an electronic representation of the voice memo is

created, reading on the claimed "selecting means comprises a push button, a depression of which defines a starting point of the selected part of the audio information," (col. 4 lines 22-30).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to allow a user to press a key on the phone to start a recording as taught by Osman in the apparatus of Shanahan, as modified by Morishima, in order to customize the device to suit the user (Shanahan; abstract).

Consider **claim 8**, the combination of Shanahan and Morishima, as modified by Osman, clearly shows and discloses the claimed invention **as applied to claim 7 above**, and in addition, Osman further discloses that by pressing the left "Stop" soft key **8** the user has a possibility to stop the present recording, reading on the claimed "selecting means comprises a push button, a depression of which defines an ending point of the selected part of the audio information," (col. 4 lines 30-32).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to allow a user to press a key on the phone to stop a recording as taught by Osman in the apparatus of Shanahan, as modified by Morishima, in order to customize the device to suit the user (Shanahan; abstract).

9. **Claims 10 and 13** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Shanahan (U.S. Patent # 6,496,692 B1)** in view of **Morishima (Pub # U.S. 2003/0083107 A1)**.

Consider **claim 15**, Shanahan clearly shows and discloses an apparatus that allows user to program user-defined audio information into a programmable electronic device. A user may choose certain information, such as an audio sample of a popular song that is available from source **50** and transferred to programmer **30**. The programmer may be embedded within programmable device **20**, reading on the claimed "mobile terminal comprising: means for receiving audio information," (col. 1 lines 55-57, col. 3 lines 19-40, col. 8 lines 60-67). A user may customize user-defined information (audio track) by performing various editing procedures, and he or she may be given the option to review the piece to ensure it is acceptable, reading on the claimed "providing means for providing the audio information to the user," (col. 9 lines 25-40). In addition to selecting user-defined information with the programmer, a user may customize user-defined information, such as finding an audio track and editing or sampling a portion of the desired segment, reading on the claimed "means operable by the user for selecting part of the audio information," (fig. 8, fig. 9, col. 9 lines 5-42). A user may wish to sample a few bars of a popular song and send it along as signature information. A user may program the device so that certain signature files are played in response to receiving a characteristic indicative of a caller, reading on the claimed "means for attracting the attention of the user by playing

the selected part of the audio information, and means for determining that the attention of the user is desired/required, the determining means being adapted to operate the attracting means," (col. 7 lines 60-65, col. 9 lines 30-32).

However, Shanahan fails to specifically disclose that the audio tracks are edited using voice commands.

In the same field of endeavor, Osman clearly shows and discloses a method where a user can with use of a memory management terminal record an acoustic sample. The user can assign each acoustic sample with a label or category-label, a priority, a sorting criteria and a name. The method includes those acoustic samples with the same label or category-label can be represented on the display of a memory management terminal and can be re-sorted, played back or deleted. The handling of the recorded acoustic samples can be done by using a keyboard of the memory management terminal, but also can be done by using the voice commands, reading on the claimed "means is operable to receive voice commands from the user identifying the selected part of the audio information," (col. 1 lines 32-43).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to allow a user to use voice commands to handle acoustic samples as taught by Osman in the apparatus of Shanahan, in order to customize the device to suit the user (Shanahan; abstract).

Consider **claim 13**, Shanahan, as modified by Morishima, clearly shows and discloses the claimed invention **as applied to claim 10 above**, and in

addition, Shanahan further discloses that a user may program the device so that certain signature files are played in response to receiving a characteristic indicative of a caller, reading on the claimed "mobile terminal is a mobile telephone, and wherein the attracting step comprises the mobile telephone receiving an incoming telephone call," (col. 7 lines 60-65, col. 9 lines 30-32).

10. **Claim 11** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Shanahan (U.S. Patent # 6,496,692 B1)** in view of **Osman (U.S. Patent # 6,889,039 B2)**, and in further view of **Skorko (U.S. Patent # 6,560,466 B1)**.

Consider **claim 11**, and as applied to **claim 10** above, Shanahan, as modified by Osman, clearly shows and discloses the claimed invention except that the volume at which the signature file is played is dependent on the proximity of the user to the device.

In the same field of endeavor, Skorko clearly shows and discloses a wireless communication handset with a sensor and detection circuitry to detect user proximity to the handset. The detection circuitry is connected to the control unit of the handset to implement ring volume control. When a user comes into close proximity of the sensor, the detection circuitry signals the control unit to lower the ring volume, reading on the claimed "means for attracting the attention of the user alters playback volume in dependence on proximity of the user to the mobile terminal," (abstract, col. 1 lines 55-1).



Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use the proximity of a user to a handset to lower the ring volume as taught by Skorko in the apparatus of Shanahan, as modified by Osman, in order to customize the device to suit the user (Shanahan; abstract).

11. **Claim 12** is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of **Shanahan (U.S. Patent # 6,496,692 B1)** and **Osman (U.S. Patent # 6,889,039 B2)**, in view of **Skorko (U.S. Patent # 6,560,466 B1)**, and in further view of **Patsiokas et al. (Pub # US 2004/0266336 A1)**.

Consider **claim 12**, and **as applied to claim 11 above**, the combination of Shanahan and Osman, as modified by Skorko, clearly shows and discloses the claimed invention except that the memory of the electronic device is depicted by a time duration.

In the same field of endeavor, Patsiokas et al. clearly show and disclose a device that allows a user to store content from other sources, record content that is broadcast for subsequent use, and also facilitates the purchase of content from a content provider (paragraph 59). The device could be connected to, or incorporated into, a cellular phone, and download the purchased file over the cellular network. While playing, the display shows all of the standard XM information plus the date (month and day only) and time recorded (hour and minute only), minutes and seconds played and minutes and seconds remaining

in memory, reading on the claimed "means for depicting how much memory remains for storing audio information, wherein the memory remaining is represented by a time duration," (paragraphs 64, 76).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have a device display remaining memory in minutes and seconds as taught by Patsiokas et al. in the apparatus of Shanahan and Osman, as modified by Skorko, in order to allow the user to know how many songs or tracks may be recorded in memory.

12. **Claim 15** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Shanahan (U.S. Patent # 6,496,692 B1)** in view of **Patsiokas et al. (Pub # US 2004/0266336 A1)**.

Consider **claim 15**, Shanahan clearly shows and discloses an apparatus that allows user to program user-defined audio information into a programmable electronic device. A user may choose certain information, such as an audio sample of a popular song that is available from source **50** and transferred to programmer **30**. The programmer may be embedded within programmable device **20**. A user may select information from the Internet or a remote computer, reading on the claimed "mobile terminal comprising receiving means for receiving means for receiving audio information," (col. 1 lines 55-57, col. 3 lines 19-40, col. 8 lines 60-67, col. 9 lines 20-22). The programmer may include a processor and a programmable memory, reading on the claimed "storing

means for storing the audio information," (col. 4 lines 1-10). A user may customize user-defined information (audio track) by performing various editing procedures, and he or she may be given the option to review the piece to ensure it is acceptable, reading on the claimed "providing the audio information to the user," (col. 9 lines 25-40). In addition to selecting user-defined information with the programmer, a user may customize user-defined information, such as finding an audio track and editing or sampling a portion of the desired segment, reading on the claimed "selecting means operable by the user for selecting part of the audio information, while the audio information is provided to the user, by the providing means," (fig. 8, fig. 9, col. 9 lines 5-42). A user may wish to sample a few bars of a popular song and send it along as signature information. A user may program the device so that certain signature files are played in response to receiving a characteristic indicative of a caller, reading on the claimed "mobile terminal subsequently attracting the attention of the user by playing the selected part of the audio information," (col. 7 lines 60-65, col. 9 lines 30-32).

However, Shanahan fails to specifically disclose that the memory of the electronic device is depicted by a time duration.

In the same field of endeavor, Patsiokas et al. clearly show and disclose a device that allows a user to store content from other sources, record content that is broadcast for subsequent use, and also facilitates the purchase of content from a content provider (paragraph 59). The device could be connected to, or incorporated into, a cellular phone, and download the purchased file over the

cellular network. While playing, the display shows all of the standard XM information plus the date (month and day only) and time recorded (hour and minute only), minutes and seconds played and minutes and seconds remaining in memory, reading on the claimed "means for depicting how much memory remains for storing audio information, wherein the memory remaining is represented by a time duration," (paragraphs 64, 76).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have a device display remaining memory in minutes and seconds as taught by Patsiokas et al. in the apparatus of Shanahan, in order to allow the user to know how many songs or tracks may be recorded in memory.

13. **Claim 16** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Shanahan (U.S. Patent # 6,496,692 B1)** in view of **Patsiokas et al. (Pub # US 2004/0266336 A1)**, and in further view of **Osman (U.S. Patent # 6,889,039 B2)**.

Consider **claim 16**, and **as applied to claim 15 above**, Shanahan, as modified by Patsiokas et al., clearly shows and discloses the claimed invention except that selecting audio has a defined starting point and ending point in time.

In the same field of endeavor, Osman clearly shows and discloses a method where a user can with use of a memory management terminal record an acoustic sample. The user can assign each acoustic sample with a label or category-label, a priority, a sorting criteria and a name. The method includes

those acoustic samples with the same label or category-label can be represented on the display of a memory management terminal and can be re-sorted, played back or deleted, (col. 1 lines 32-43). When the user selects the "Select" operation from the "Record" display by pressing the left soft key 8, "Recording" display 50 will appear. Thereafter the phone starts the recording of a voice memo, and simultaneously an electronic representation of the voice memo is created, and by pressing the left "Stop" soft key 8 the user has a possibility to stop the present recording, reading on the claimed "selecting means is defined by a starting point in time and an ending point in time," (col. 4 lines 22-32).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to allow a user to press a key on the phone to start a recording as taught by Osman in the apparatus of Shanahan, as modified by Patsiokas et al., in order to customize the device to suit the user (Shanahan; abstract).

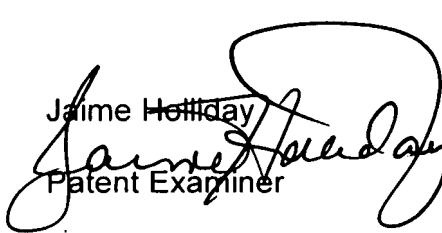
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jaime M. Holliday whose telephone number is (571) 272-8618. The examiner can normally be reached on Monday through Friday 7:30am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Feild can be reached on (571) 272-4090. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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ERIKA A. GARY  
PRIMARY EXAMINER

  
Jaime Holliday  
Patent Examiner